IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 359 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRISH PREMNARAYAN SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR S.R. SHAH for Petitioner No. 1

MR BY MANKAD, APP for Respondent No. 1

Respondent No. 2 served

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 09/10/2001

ORAL JUDGEMENT

1. Heard learned APP Mr. B.Y.Mankad for the State. However, none is present on behalf of the applicant. Learned Advocate Mr. S.R. Shah had appeared on behalf

of the applicant but he expired and thereafter learned Advocate Mr. H.S.Shah requested this Court that he was to appear in the matter and the matter be adjourned and hence the matter came to be adjourned today. However, after calling out the matter twice, none has appeared on behalf of the applicant.

2. Under revisional powers, the order impugned is examined thoroughly. As per the brief facts of the case, against the present applicant a crime came to be registered at Vayol Police Station of Kutch District vide CR No.I- 1/2001 for the offences punishable under Sections 409 of the Indian Penal Code. The complaint was filed by one Narendra Gangadhar Jani, Law Officer of Sanghi Industries at Sanghipuram on 6th of May, 2001. It was alleged that at the instance of Sanghi Industries Limited, one Sarvodaya Trust is established and registered and the complainant is the Secretary of the above Trust. Before 5th April, 2001, the present applicant was the Secretary of the said Trust. Trust has gardens, on which vegetables are grown. The income from these vegetables is required to be noted on the accounts books. Right from 2nd April, 2000 to 13th March, 2001, the period in which the accused was the Secretary, he did not not credit the amount of income of the vegetables grown on the garden of the Trust and misappropriated the said amount for his own use. The accused was released on anticipatory bail vide order of this Court passed on 10th August, 2001 in Misc. Criminal Application No. 5695 of 2001. One of the conditions of said anticipatory bail order was, the Investigating Agency was at liberty to ask for the remand of the accused and hence before Judicial Magistrate, First class at Nalia, an application came to be filed by the Investigating Agency that an amount of Rs. 13,387/- is alleged to have been misappropriated by the accused and for the recovery of the said amount, Investigating Agency is required the custody of the accused by way of remand for 7 days. Learned Judicial Magistrate, First Class, Nalia, partly allowed the application and granted the remand for one day on 16th August, 2001. The said order of learned JMFC, Nalia, Kutch, is the subjct matter of this Revision Application.

3. Having heard learned APP Mr. B.Y. Mankad and having perused the papers, it clearly appears that the mudamal for which the remand is asked, is currency notes, and the allegation in the complaint is the accused misappropriated the amount of the vegetables grown on the fields of the Trust and converted the same for his own use. In these circumstances, it is impossible that the income which the accused alleged to have misappropriated

could be recovered from him. Granting of remand of the accused for the recovery of the amount equivalent of the misappropriated would not be justified in the facts and circumstances of the case, more so when, the bail order directs the accused to cooperate in the investigation. In this view of the matter, the order granting the remand of the accused to the police custody for one day passed by the learned Judicial Magistrate, First Class, Nalia, Kutch, cannot be maintained. This Revision Application is required to be allowed. In this view of the matter, the following order is passed :

" Revision Application is allowed. Order impugned passed by the learned Judicial Magistrate, First Class, Nalia, Kutch on 16th August, 2001, remanding the custody of the accused to the Police for one day is hereby quashed and set aside. Rule is made absolute to that extent."

(J.R. Vora, J.)

p.n.nair